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No. 90-1761

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In The

Supreme Court of the United States

October Term, 1990

JOHN MONROE, ET AL.,

Petitioners,

v.

CITY OF WOODVILLE MISSISSIPPI, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

REASONS FOR GRANTING THE WRIT

I. THE SINGLE DISTRICT JUDGE DECIDED A QUESTION OF COVERAGE UNDER § 5 OF THE VOTING RIGHTS ACT OF 1965

Respondents erroneously argue that the single district judge's finding that "no change" in voting had occurred prior to petitioner filing their § 5 action seeking a declaratory judgment and injunctive relief was in fact a finding that there had been "no change in the conduct of the Defendants for attorneys' fees purposes[1] . . . " [Respondents' Brief in Opposition, p. 9]. In fact, the single district judge specifically ruled, "[T]his Court has determined that *no changes in voting practice or procedure* as relates to the town marshal position had taken place prior to the institution of this suit." (emphasis added). [Appendix 11a]. The single district judge went on to rule that, "[T]he actions taken by Woodville to abolish the town marshal position took place after the suit had been filed and were not part of the occurrences complained of by the Plaintiffs."[2] [Appendix, 11a-12a]. The respondents

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[1] This statement by respondents is a perceived misstatement of fact.

[2] The single district judge had mistakenly decided that "Woodville undertook the housekeeping procedure of abolishing the town marshal position in which there had been no interest by a single candidate in several years." after petitioners had "failed to prove their case". [Appendix, 11a]. A

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argument to the contrary, [Brief in Opposition, p. 10], is misplaced.[3]

The first question presented in petitioners Petition for Writ of Certiorari is substantial. The question presented gives the court the opportunity to delineate for lower courts the proper function of three-judge district courts and the proper functions of single district judges in § 5 cases where the plaintiffs seek attorney fees and the case is mooted before plaintiffs obtain a judgment.

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chronology of the case clearly shows that petitioners complaint was filed on March 2, 1988. [Appendix, 4a]. Petitioners filed a motion for summary judgment on their § 5 issues and to convene a three-judge district court on January 12, 1989. Respondents filed a motion for partial stay of proceedings on February 6, 1989. [Appendix, 23a-25a]. Then, on February 7, 1989, they adopted a formal resolution abolishing the town marshal position. [Appendix, 26a]. Respondents then made a formal submission of the abolition of the elected town marshal position (the alleged housekeeping measure) on February 28, 1989. [Appendix, 26a-29a]. On March 24, 1989, the three-judge district court denied petitioners motion for summary judgment [Appendix, 5a] and entered a formal order to that effect on April 25, 1989. [See Jurisdictional Statement in *Monroe v. City of Woodville, Mississippi*, Sup. Ct. No. 89-301, p. A-1]. The voting change was precleared by the United States Attorney General on May 2, 1989. [Appendix, 5a].

[3] The respondents erroneously argue that the single district judge ruled that no change in the respondents conduct had occurred. [Brief in Opposition, pp. 9-10]. However, the district judge's opinion clearly shows that the judge ruled that no voting change had occurred. See footnote 2, supra.

II. IN A § 5 VOTING RIGHTS ACTION A PLAINTIFF DOES NOT HAVE TO SPECIFICALLY REQUEST THE RELIEF ACTUALLY GRANTED IN ORDER TO BE CONSIDERED A PREVAILING PARTY

Respondents, in the second argument in their Brief In Opposition, pp. 11-13, revisit the questions presented by appellants (petitioners herein) in their Jurisdictional Statement in *Monroe v. City of Woodville, Mississippi,* Sup. Ct. No. 89-301. Respondents here argue that "the town marshal position had not been formally abolished, by action of the Board of Aldermen, before the suit was filed." [Brief in Opposition, p. 11]. As previously addressed by petitioners, the failure of the Town of Woodville to fill the position of town marshal for more than 12 years by general or special election when required by state law to do so was a de facto change in voting. [See Jurisdictional Statement in *Monroe v. City of Woodville, Mississippi,* Sup. Ct. No. 89-301, pp. 5-8, citing *Allen v. Board of Elections,* 393 U.S. 544 (1969), *Hathorn v. Lovorn,* 457 U.S. 255, 265 n. 15 (1982); *N.A.A.C.P. v. Hampton County Election Commission,* 470 U.S. 166 (1985). General elections were required by state law to fill the town marshal position every four years since 1890. Special elections were required to fill offices that became vacant due to death, resignation or otherwise.[4]

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[4] Section 21-15-5, Miss. Code Ann. (1972), recodified as § 23-15-857, Miss. Code Ann. reads as follows:

> When it shall happen that there is any vacancy in a city, town or village office which is elective, the unexpired term of which shall not exceed six

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Respondents assertions that petitioners argument that Respondents had implemented a de facto voting change by not holding elections for town marshal when required to do so by state election laws and consistent with the town's past practices was a "new challenge",

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> months, the same shall be filled by appointment by the governing authority, or remainder of the governing authority of said city, town or village. . . .

Section 21-11-9, Miss. Code Ann. recodified as § 23-15-857 (Supp. 1990) reads, in part, as follows:

> When it shall happen that there is any vacancy in an elective office in a city, town, or village, the unexpired term of which exceed six months, the governing authority, or remainder of the governing authority, of said city, town or village *shall make and enter on the minutes an order for an election to be held in such city, town or village to fill the vacancy* . . . (emphasis added).
>
> *. . . In the event no person shall have qualified at least ten days prior to the date of the election, the governing authority, or remainder of the governing authority, shall dispense with the election and fill the vacancy by appointment.* (emphasis added).

These statutes clearly show that no elective municipal office could remain vacant for 12 years. If more than six months was remaining on the marshal's term when Mr. McCarstle died, then a special election was required to fill the office. If less than six months was remaining on the term when he died, then the Mayor and Board of Aldermen were required to appoint someone to fill the remainder of the term (until the Summer, 1977). After then, the person so appointed would run for office during the regular general elections if another person qualified as a candidate for the office. If no other person qualified as a candidate, then the person so appointed would hold over in the office until the next regular election.

[Brief in Opposition, p. 11], is clearly in error. Petitioners made these arguments before the three-judge district court. [See Jurisdictional Statement in *Monroe v. City of Woodville, Mississippi,* Sup. Ct. No. 89-301, pp. E8-E11].

Respondents also argue that petitioners were not granted any relief prayed for in their complaint. [Brief in Opposition, pp. 11-15]. Specifically, respondents argue that petitioners were not granted declaratory relief that a change in voting with respect to the town marshal position had occurred, and petitioners were not granted any injunctive relief. However, petitioners had only one claim for relief. Petitioners cause of action paragraph stated:

> The plaintiffs challenge the city of Woodville's act of changing the method of selecting its town marshal and election commission members from elected positions to appointed positions without obtaining Section 5 preclearance as a violation of the rights secured to them by the Voting Rights Act of 1965, as amended.

This court has clearly stated, "[I]t is sufficient to recognize that complaint asserting only one legal right, even if seeking multiple remedies for the alleged violation of that right, states a single claim for relief." *Liberty Mutual Ins. Co. v. Wetzel,* 424 U.S. 737, 744 n. 4 (1976). Petitioners asserted only one legal right, i.e. that the respondents had violated § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, by not obtaining preclearance of their failure to hold elections for town marshal.[5] "Many civil rights cases

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[5] Respondents devote much time in their Brief in Opposition, pp. 2-3, to petitioners § 5 claim involving election

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will present only a single claim." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Petitioners presented only one legal claim in the instant § 5 action; whether or not the respondents had violated § 5 by not holding elections for town marshal. Respondents were put on notice of the § 5 violation on March 2, 1988, the date petitioners filed their complaint. See *Clark v. Roemer*, Sup. Ct. No. 90-952, at p.7 (decided June 3, 1991). The Court of Appeals for the Fifth Circuit's summary affirmance of the district court's decision that no voting change had occurred and that petitioners were not prevailing parties does, indeed, conflict with clear precedent established by this court. See, *Allen v. Board of Elections*, supra; *Hathorn v. Lovorn*, supra; *N.A.A.C.P. v. Hampton County*, supra; *Liberty Mutual Ins. Co. v. Wetzel*, supra; *Hensley v. Eckerhart*, supra; *Clark v. Roemer*, supra.

CONCLUSION

On the basis of the facts and authorities cited herein and in the Petition for Writ of Certiorari, this Court should grant the Petition for Writ of Certiorari, and enter a per curiam Opinion of the Court reversing the lower court's decision and remand the case to the lower court

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commissioners. It is not necessary for petitioners to address respondents' implications here since the § 5 claim pertaining to election commissioners has not been presented by petitioners in their Petition for Writ of Certiorari or in the Jurisdictional Statement filed in *Monroe v. City of Woodville, Mississippi*, Sup. Ct. No. 89-301.

with instructions to enter judgment for petitioners on their motion for award of attorney fees and to decide a reasonable attorney's fee due petitioners.

Respectfully submitted,

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